



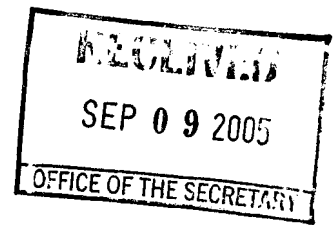
MSRB

Municipal Securities
Rulemaking Board

September 8, 2005

Jonathan G. Katz
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

4-508



RE: Petition to Amend Rule 15c2-12

Dear Mr. Katz:

The Municipal Securities Rulemaking Board ("MSRB") petitions the Securities and Exchange Commission ("SEC") to amend Rule 15c2-12 under Section 15 of the Securities Exchange Act of 1934, as amended ("Exchange Act"), to delete reference to the MSRB as a recipient of material events notices filed by municipal securities issuers.¹

Background

On November 10, 1994, the SEC adopted amendments to Rule 15c2-12 to provide more continuing disclosure information to the market.² Pursuant to Rule 15c2-12(b)(5)(i), the SEC required brokers, dealers and municipal securities dealers ("dealers"), prior to underwriting a new issue, to reasonably determine that the issuer or other obligated person had undertaken, in a written agreement or contract for the benefit of bondholders, certain continuing disclosure obligations. Among other obligations, the issuer or other obligated person must undertake to send to each Nationally Recognized Municipal Securities Information Repository ("NRMSIR") or the MSRB, and to the appropriate state information depository ("SID"), if any, certain material events notices designated in subsection (C).³ The SEC included the MSRB in its plan for dissemination

¹ Proposed rule language is attached.

² Rel. No. 34-34961 (November 10, 1994).

³ In addition, in Rule 15c2-12(d)(2), the small issuer exemption is conditioned on an issuer or obligated person undertaking a limited disclosure obligation,

continued

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of material events notices because the MSRB already had a voluntary disclosure system in place for receiving and disseminating certain types of material events notices. Under Rule 15c2-12, the use of the MSRB system is optional since the material event undertaking can be satisfied by sending notices to the NRMSIRs rather than to the MSRB.

The MSRB's original system for material events notices, the Continuing Disclosure Information ("CDI") System, was approved by the SEC and was made available in January 1993.⁴ On March 24, 1997, the MSRB implemented certain improvements to its dissemination process and replaced its earlier CDI System with CDINet. CDINet is designed to accept and disseminate material events notices submitted pursuant to the requirements of Rule 15c2-12. Documents may be submitted by internet, fax or paper. Once a document has been accepted and processed by CDINet, it is broadcast to subscribers and made available in the MSRB's public access facility. CDINet, like other MSRB systems, was approved by the SEC through a rule filing process similar to that used for MSRB rules.⁵

Basis for Requested Action

CDINet was intended to reduce the burden on issuers and obligated persons of their material event undertakings because filings could be made through a single submission to the MSRB instead of through several filings directly to all the NRMSIRs. However, relatively few issuers and obligated persons have taken this approach and usage of CDINet has diminished in recent years. In 1997, CDINet broadcasted over 10,000 material events notices to subscribers. Since that time, issuer submissions to the MSRB have dropped considerably, resulting in broadcasts by CDINet ranging from 1,000 to 2,500 yearly. A recent review of the material events notices broadcasted by CDINet in the first half of 2004 showed that, of the 1,104 notices received, 504 were bond calls, 213 were defeasances and 145 were rating changes –most of which the MSRB believes are readily available from other sources.⁶ For example, the MSRB reviewed a sample of 100 material event notices broadcasted by CDINet in June 2005. Definitive information on 90 of these notices was found in a review of information available from NRMSIRs that do not subscribe to CDINet.⁷ The remaining 10 notices presumably were not also

including sending certain material events notices to each NRMSIR or the MSRB, as well as the appropriate SID.

⁴ Rel. No. 34-30556 (April 6, 1992).

⁵ Rel. No. 34-38066 (December 19, 1996). Attached is a further explanation of CDINet.

⁶ A list of broadcasted notice categories for the first half of 2004 is attached.

⁷ CDINet only has two NRMSIR subscribers – Kenny S&P and Thomson Financial Services.

provided directly to all the NRMSIRs.⁸ The MSRB is concerned that such notices may not have reached the market as intended by Rule 15c2-12 because all NRMSIRs do not subscribe to CDINet.

The need for CDINet was also lessened when, through the cooperative efforts of numerous industry organizations⁹, www.DisclosureUSA.org became available last September as a free, alternative single filing location.¹⁰ As the municipal securities market focuses its efforts to streamline the filing process through DisclosureUSA, the number of documents submitted to CDINet will lessen. The MSRB believes that continued operation of CDINet would provide little or no continuing benefit to the marketplace and could result in confusion on the part of issuer submitters as well as dealer and investor users of secondary market information that would detract from the efficiency of DisclosureUSA. Finally, because of the age of the CDINet System, upgrading at an estimated cost of \$500,000 to \$1 million would be necessary to keep the system operational.

* * *

⁸ These notices included six notices regarding failure to provide an annual financial statement, two bond calls, one rating change and one “other information.” There is some evidence, however, that at least one NRMSIR may have received some of the notices of failure to provide an annual financial statement but subsequently superseded such information with the annual financial statements themselves once these were received.

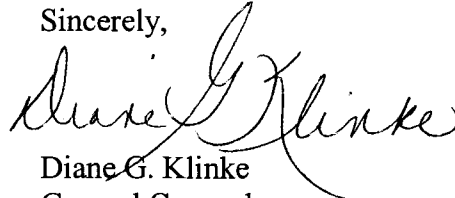
⁹ Participants from the following groups were involved in the creation of DisclosureUSA: American Bankers Association; American Bar Association – Section of State and Local Government Law; American Institute for Certified Public Accountants; CFA Institute (formerly the Association for Investment Management and Research); Council of Infrastructure Financing Authorities; Government Finance Officers Association; Healthcare Financial Management Association; Investment Counsel Association of America; Investment Company Institute; National Association of Bond Lawyers; National Association of Independent Public Finance Advisors; National Association of State Auditors, Comptrollers and Treasurers; National Association of State Treasurers; National Council of Health Facilities Finance Authorities; National Council of State Housing Agencies; National Federation of Municipal Analysts; Regional Municipal Operations Association; and The Bond Market Association. The Municipal Advisory Council of Texas, CUSIP Service Bureau and each of the NRMSIRs and SIDs also contributed to the establishment of DisclosureUSA.org.

¹⁰ DisclosureUSA was the subject of a staff interpretive letter dated September 7, 2004 from Martha Mahan Haines, Chief of the Office of Municipal Securities, to W. David Holland, Chairman, Texas MAC and John M. McNally of Hawkins, Delafield and Wood LLP.

The MSRB petitions the SEC to remove reference to the MSRB as a recipient of material events disclosures in Rule 15c2-12. If the SEC elects to take this action, the MSRB will make a filing pursuant to Rule 19(b) under the Exchange Act to terminate operation of its CDINet System. Once CDINet ceases operations, the MSRB would ensure for a reasonable period that any secondary market disclosure erroneously submitted to the MSRB is forwarded to the NRMSIRs through www.DisclosureUSA.org and the sender is alerted of this fact and asked to provide future information according to the revised Rule 15c2-12 requirements.

Please contact me at (703) 797-6600 if you have any questions.

Sincerely,



Diane G. Klinke
General Counsel

cc: Martha Mahan Haines, Esq.

DGK:phm
Attachments

Reg. §240.15c2-12¹

(a) No change

(b)(1) through (4) No change

(5)(i) No change

(A) and (B) No change

(C) In a timely manner, to each nationally recognized municipal securities information repository [or to the Municipal Securities Rulemaking Board,] and to the appropriate state information depository, if any, notice of any of the following events with respect to the securities being offered in the Offering, if material:

(1) through (11) No change

and

(D) In a timely manner, to each nationally recognized municipal securities information repository [or to the Municipal Securities Rulemaking Board,] and to the appropriate state information depository, if any, notice of a failure of any person specified in paragraph (b)(5)(i)(A) of this section to provide required annual financial information on or before the date specified in the written agreement or contract.

(ii) and (iii) No change

(c) No change

(d)(1) No change

(2)(i) No change

(ii) An issuer of municipal securities or obligated person has undertaken, either individually or in combination with other issuers of municipal

¹ [Brackets] indicate deletions.

securities or obligated persons, in a written agreement or contract for the benefit of holders of such municipal securities, to provide:

(A) No change

(B) In a timely manner, to each nationally recognized municipal securities information repository [or to the Municipal Securities Rulemaking Board,] and to the appropriate state information depository, if any, notice of events specified in paragraph (b)(5)(i)(C) of this section with respect to the securities that are the subject of the Offering, if material; and

(iii) No change

(3) and (4) No change

(e) through (g) No change

**NOTICE
— OF —
APPROVAL**

CDI System Approval

Route To:

Manager, Muni Department
Underwriting
Trading
Sales
Operations
Public Finance
Compliance
Training
Other

CDI System Approved

- The Securities and Exchange
- Commission has approved the
- permanent operation of the CDI
- System.
-
-
-
-
-
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Questions about the changes to the CDI System may be directed to Marianne I. Dunaitis, Assistant General Counsel, or Thomas A. Hutton, Director of MSIL.

On December 19, 1996, the Securities and Exchange Commission (Commission)¹ approved the permanent operation of the Board's Continuing Disclosure Information (CDI) System of the Municipal Securities Information Library® (MSIL®) system.² The CDI System is now known as CDINet. Under CDINet, the current limit of 10 pages per document for fax and paper submissions has been changed to 25 pages. In addition, CDINet replaces the modem submission procedure with a secure Web page on the Internet for use by submitters. To better reflect the cost of operation of CDINet, the yearly subscription fee has been increased from \$16,000 to \$23,000.

BACKGROUND

On November 10, 1994, the Commission approved an amendment to its Rule 15c2-12 which prohibits dealers from underwriting issues of municipal securities unless the issuer commits, among other things, to provide material events notices to the Board's CDI System or to all Nationally Recognized Municipal Securities Information Repositories (NRMSIRs) and to the applicable state information depository.

³ In addition, the Rule prohibits dealers from recommending municipal securities without having a system in place to receive material events notices. To conform to the new Commission requirements, the Board revised the CDI System and implemented an interim System designed to accept material event notices while a larger permanent system was being designed.⁴ CDINet represents the permanent system.

CDINET

There are three main areas of change from the interim System to CDINet. The first area relates to the length of documents submitted to the System and how they will be handled. The interim CDI System accepted and disseminated submissions of up to 10 pages, plus a voluntary cover sheet.⁵ Under the new system, CDINet accepts fax and paper submissions of up to 25 pages. Should a submission exceed 25 pages, the first 25 pages and the cover sheet will be disseminated, with a notice to subscribers that the submission exceeds 25 pages. CDINet will then make available a copy of the complete submission to subscribers upon request, by express or regular mail, at their expense.

In addition, the interim CDI System was designed with the capability to disseminate up to 200 10-page submissions a day. While CDINet increases the length of fax and paper notices it will disseminate from 10 pages to 25 pages, experience with the interim CDI System indicates that the vast majority of submissions will be no longer than two to three pages. CDINet is designed to disseminate up to 500 three-page submissions a day.

Regarding processing time, the Commission stated in the Release approving the amendments to Rule 15c2-12 that 15 minutes might be an appropriate turnaround time for dissemination of material event notices by NRMSIRs, but that it would further discuss the issue during the NRMSIR recognition process. The Board will use its best efforts to maintain a quick turnaround time for documents sent by facsimile and Internet to CDINet, but it is not possible to guarantee a 15-minute turnaround to subscribers if large numbers of documents are submitted.

¹ Sec. Exch. Act Rel. No. 38066 (December 19, 1996)

² The Municipal Securities Information Library system and the MSIL system are registered trademarks of the Board. The MSIL® system, which was approved in Securities Exchange Act Release No. 29298 (June 13, 1991), is a central facility through which information about municipal securities is collected, stored and disseminated.

³ Sec. Exch. Act Rel. No. 34961 (November 10, 1994).

⁴ The Board also terminated the pilot phase of the CDI System and filed its Report on the Conclusion of the CDI Pilot of the Municipal Securities Information Library® System with the Commission on August 25, 1995.

⁵ The cover sheet was in use in the interim System and provides identifying information about the issuer, the securities at issue, and the material event being disclosed. Use of the cover sheet is voluntary for submitters.

ments are received in a short period of time. The Board will ensure that any document with a voluntary cover sheet received by facsimile, Internet, or mail will be disseminated the same day it is received. Depending upon the volume of documents received, documents that refer in their title to one of the 12 material events described in SEC Rule 15c2-12 but do not have voluntary cover sheets will be disseminated on the same day, if possible, but documents with cover sheets have higher dissemination priority.

The second change from the interim CDI System replaces the current modem submission system with a secure Web page on the Internet. The interim System used the modem submission system developed for the original CDI Pilot. That system required, among other things, that the issuer or its agent install software developed by the Board on a personal computer and make submissions by having their modems dial the CDI System at the Board's offices. The CDINet Web page permits issuers or their agents to use commonly available Web browser software and make their submissions over the Internet. The other requirements of the modem submission system, *i.e.*, the need to receive written authorization, a user name, and a password from the Board and the need for submissions to be in ASCII format only, will remain in effect on the CDINet Web page.⁶ Finally, since submissions in ASCII format are substantially smaller, in terms of computer storage, than the equivalent submission in fax format, the CDINet Web page will accept and disseminate submissions of any length.

The third change from the interim CDI System raises the annual subscription fee from \$16,000, plus telephone charges, to \$23,000, plus telephone charges. The increased fee better reflects the Board's operational costs of the CDI System, but is not expected to produce excess revenues above system costs.

As with the pilot and interim Systems, the notices sent to subscribers from CDINet will be available to any interested person at the Board's Public Access Facility in Alexandria, Virginia. The cost of copying notices in the Public Access Facility will remain 20 cents per page.

● December 19, 1996

⁶ In adopting the amendment to SEC Rule 15c2-12, the Commission stated that NRMSIRs will not be required to verify the accuracy of the information submitted, only to accurately convey the information. Sec. Exch. Act Rel. No. 34961 at n. 155 (November 10, 1994). The Board similarly asserts that it is not required to undertake to establish the authenticity or accuracy of documents submitted, but that it will attempt to ensure accurate dissemination of documents accepted into the System.

**Material Event Notices Broadcast by
the MSRB's CDINet System
In the First Half of 2004**

Type of Notice	Number Broadcast
Bond Calls	504
Defeasances	213
Rating Changes	145
Failure to File Annual Report	70
Information not specifically required under SEC Rule 15c2-12	70
Bond Calls and Defeasances	56
Annual Report and CAFR Related Information	13
Various multiple categories indicated	10
Release, Substitution, or Sale of Property Securing Repayment of Securities	5
Principal and Interest Payment Delinquencies	4
Substitution of Credit or Liquidity Providers, or Their Failure to Perform	4
Non-Payment Related Defaults	3
Adverse Tax Opinions or Events Affecting the Tax-Exempt Status of the Security	3
Unscheduled Draws on Debt Service Reserves Reflecting Financial Difficulties	2
Unscheduled Draws Credit Enhancements Reflecting Financial Difficulties	1
Modifications to the Rights of Security Holders	1
TOTAL	1,104